

THE HONORABLE LONNY R. SUKO

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

MIGUEL AVILA-GARCIA, a single
man;

Plaintiff,

v.

HUNTERWOOD TECHNOLOGIES
LTD., a Canadian limited liability
company,

Defendant.

No. CV-12-3103-LRS

STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER REGARDING THE
PROTECTION OF CONFIDENTIAL
AND TRADE SECRET
INFORMATION

IT IS HEREBY STIPULATED AND AGREED by the undersigned
counsel for the parties that:

1. This Confidentiality Agreement and Protective Order shall govern
the production, inspection, copying, and disclosure of all confidential and trade

STIPULATED CONFIDENTIALITY AGREEMENT
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1 secret information produced in this Action by Defendant Hunterwood
2 Technologies LTD., (“Hunterwood”) in response to discovery requests
3 propounded by any party to this case. The parties agree to provide such
4 confidential and trade secret information and documentation subject to the terms
5 and conditions set forth in this Confidentiality Agreement and Protective Order
6 (“Protective Order”). The confidential and trade secret information and
7 documents disclosed and produced by the parties shall be used solely for the
8 purpose of this litigation and shall be produced and disclosed pursuant to the
9 terms of this Protective Order. The documents and information disclosed
10 hereunder shall not be used in any other proceedings or lawsuits, or for any
11 other purpose.
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16 2. The parties possess and/or hold the right to certain confidential and
17 trade secret information which may be disclosed to the parties in this action
18 through discovery or otherwise. The parties desire to make sure that any such
19 confidential and trade secret information shall not be used for any purpose other
20 than this lawsuit, shall not be made public by any party to this action, and shall
21 not be otherwise disseminated by any party to this action except as set forth in
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1 this Protective Order. The parties to this action, through their attorneys of
2 record, represent that they have no intention to use such information for any
3 purpose beyond this action, and shall not do so.
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5 3. The parties have a cognizable interest in the confidential
6 information and documents to be produced and such information and
7 documentation necessarily contains trade secretes, privileged information and/or
8 other confidential information protected by law from disclosure. The disclosure
9 of confidential and privileged information and trade secrets would necessarily
10 result in serious harm to the business of Hunterwood.
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13 4. "Trade secret information," as defined herein, is to include any
14 formula, pattern, device, design, specification, or proprietary information
15 relating to Hunterwood's business, including, but not limited, to information
16 regarding any products, commerce, quality control, design, engineering,
17 manufacturing, assembly, vendors, dealers, suppliers, customers, costs, prices,
18 and finances, which gives that party an advantage over competitors who are not
19 in possession of the information.
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1 5. “Confidential information” as used herein means any information
2 that a party produces or discloses that would be considered intellectual property,
3 private information, competitive information, product design information,
4 manufacturing information, marketing information, “trade secret information”
5 (as referred to in Paragraph 4 above), or information containing proprietary
6 matters essential to the business interests of that party, whether it be a document,
7 information revealed during a deposition, information revealed in an
8 interrogatory answer, or otherwise disclosed during discovery. For the purposes
9 of this Protective Order, confidential information includes, but is not limited to,
10 any document, writing, paper, email, electronic record, reproduction, model,
11 photograph, film, videotape, tangible thing, transcript or oral testimony or
12 recorded statement of counsel, whether printed or recorded or reproduced by any
13 other mechanical process, or written or produced by hand, and the content of
14 such document, writing, paper, thing, transcript or statement which that party
15 designates as “Confidential.” By way of example, and without limitation,
16 confidential information may include documents, papers, manuals, transcripts,
17 answers to interrogatories, other responses to discovery, summaries, notes,
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1 abstracts, drawings, and instruments which comprise, embody, or summarize
2 matters that the party considers confidential and desires not to be made public.

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4 6. Hunterwood shall designate any documents which contains, "Trade
5 Secret" or "Confidential information," as "Confidential." Whenever
6 Hunterwood produces a document or tangible thing containing information it
7 reasonably believes to be confidential and which it wishes to be subject to this
8 Protective Order, it shall mark or designate the document or thing
9 "Confidential." Where any document or thing is marked or designated
10 "Confidential" upon the first page thereof, the entire document or thing shall be
11 deemed to have been marked "Confidential."
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14 7. Confidential Documents protected by the order will be specifically
15 identified by Hunterwood. This list of Confidential Documents may be
16 amended from time to time as needed during the course of this litigation. The
17 list of Confidential Documents, and all subsequent amendments, is hereby
18 incorporated by reference into this Protective Order as though set forth in full.
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21 8. This Protective Order shall not apply to the following materials:

22 (a) Documents of public record;
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1 (b) Documents filed as a public record with the
2 clerk of any federal or state court (not including
3 exhibits or depositions or discovery responses
4 which, if within the conscripts of this Protective
5 Order, must be filed under seal and with clear
6 marking on the envelopes in which they are
7 enclosed that they are subject to this Protective
8 Order);

9 (c) Documents filed with any federal or state
10 agency, copies of which are required by that
11 agency to be freely available in their entirety to
12 the public; and,

13 (d) Documents or articles published in trade
14 magazines or other general circulation
15 publications.

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17 9. Documents and/or other materials produced by Hunterwood in
18 response to any discovery request that are designated "Confidential" shall not be
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1 disclosed to, discussed with, or used in any way by anyone except:

- 2 (a) Parties and their attorneys of record to this
3 action, including attorneys in any law firm
4 appearing of record in this action;
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6 (b) Necessary employees of any law firm appearing
7 of record in this action, including paralegals and
8 secretaries who are actively engaged in the
9 within litigation;
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11 (c) Independent experts retained by any party for
12 purposes of assisting the parties and their
13 attorneys in the preparation and presentation of
14 the claims or defenses in this case;
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16 (d) Any person or persons who prepared the
17 particular document produced;
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19 (e) Any person or persons to whom copies of any
20 documents were addressed or delivered,
21 including the parties to this action;
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(f) Judges and court reporters, or others present at trial, motions and depositions held in this matter; and,

(g) Other persons who may be specifically designated by consent of counsel for the parties or pursuant to Court Order.

10. Prior to the disclosure of "Confidential" information to any person identified in Paragraph 9 (a)-(c), (e) and (g) hereof, such persons **shall be furnished with a copy of this Protective Order and shall agree in writing to be bound by its terms by executing Exhibit "A."**

11. Any material marked "Confidential" shall be used only for the prosecution and/or defense of this action, or any appeal therefrom, and not for any other purpose except as agreed to in writing by the party designating the matter confidential or if ordered by a Court upon proper notice to the party who designated the matter Confidential.

12. Documents, materials or other information which are confidential and which are so produced shall not be disclosed, or their contents in any way

1 disseminated, to any person or entity except investigators, experts, and
2 consultants which shall occur only after the investigator and/or consultant to
3 whom disclosure is made has been provided with a copy of this Protective
4 Order, has agreed to be bound by it, and has executed, subscribed and returned
5 to counsel hiring such person a duly executed copy of the "Confidentiality
6 Agreement Declaration" attached hereto as Exhibit "A." Any person identified
7 in Paragraph 9 (a)-(c), (e) and (g) shall be required to execute a copy of the
8 "Confidentiality Agreement Declaration," attached hereto as Exhibit "A." The
9 law firm securing the signature on Exhibit "A" shall keep the original of such
10 document. Excepted from this requirement are the law firms and parties
11 involved in this action, including their employees, the Court and court reporters
12 engaged in this action.

13 13. The recipient of any "Confidential" information that is provided
14 pursuant to this Protective Order shall maintain such "Confidential" information
15 in a secure and safe area carefully delineated and designated "Confidential" and
16 the recipient shall exercise due and proper care with respect to the storage,
17 custody and use of all "Confidential" information. In addition, any summary or
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1 copy of any “Confidential” information shall be subject to the terms of this
2 Protective Order to the same extent as the information or document of which
3 such summary or copy is made.
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5 14. In the event any information or document subject to the
6 confidentiality restrictions of this Protective Order is contained within any
7 motions, depositions, briefs, or other documents filed with the Court, or is
8 referred to in any hearing before the Court, such copy or reference shall be made
9 under seal, or by means of any other procedure that the Court may prescribe for
10 preserving the confidentiality of items submitted into evidence, and shall be
11 designated “Confidential” unless otherwise agreed in writing or on the record by
12 counsel for the party designating the matter as confidential. The Clerk of this
13 Court is directed to maintain under seal all documents filed in this litigation
14 which bear this legend.
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16 15. At the time of trial, Hunterwood so desiring to seal the record shall
17 have the burden to obtain a ruling regarding sealing of the record. Until a
18 determination is made by the Court, confidential information shall be lodged
19 with the Court conditionally under seal. In any event, a party intending to
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1 introduce confidential information must allow sufficient time for the parties to
2 address the issue of preserving confidentiality with the Court. No
3 “Confidential” information produced by Hunterwood is to be supplied to parties,
4 counsel, or witnesses in any other litigation.
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6 16. Should any party challenge or contest a document or other
7 information designated as “Confidential,” they shall have the right to apply to
8 the Court (or discovery referee) by written motion to have such document or
9 information no longer be designated as Confidential. Any party seeking to have
10 a document or information undesignated shall bear the burden of seeking such a
11 Court order and shall bear the burden of proof in any such proceeding. Before
12 making any such motion, the party seeking to undesignate shall meet and confer
13 with counsel for Hunterwood who has designated the document or information
14 “Confidential.”
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16 17. Nothing in this Protective Order shall be construed to entitle or
17 restrict any party to this action from lawfully obtaining any document, thing or
18 information from any other party.
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20 18. Nothing in this Protective Order shall be deemed to preclude
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1 Hunterwood from seeking and obtaining additional protection with respect to the
2 confidentiality of documents or other discovery material, or preclude other
3 parties from seeking relief from this Protective Order with respect to particular
4 material designated "Confidential" hereunder.
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6 19. The production of documents, things, or information for inspection,
7 copying, or disclosure to any other party to this action shall not be deemed to
8 waive any claim of attorney-client or work product privilege that might exist
9 with respect to that or any other documents or communications, written or oral,
10 including, without limitation, other communications referred to in any
11 documents which may be produced.
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14 20. Within 45 days of the final conclusion of all proceedings in this
15 matter, all "Confidential" information furnished pursuant to the terms of this
16 Protective Order in the possession of the parties, their counsel, counsel for other
17 parties, experts, consultants, or any other person to whom such documents or
18 information were disseminated, and any materials recording and/or otherwise
19 containing said "Confidential" information, shall be returned to counsel for the
20 party producing them. All notes containing "Confidential" information, together
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1 with all copies thereof, shall likewise be destroyed (and certified by affidavit as
2 having been destroyed by the attorney making the destruction) by the party or
3 parties in possession thereof.
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5 21. As to all documents designated as “Confidential” that counsel
6 inspect, but do not copy, the terms and conditions set for the herein with respect
7 to the disclosure of “Confidential” information shall apply with regard to the
8 disclosure of any knowledge or information obtained from the documents
9 reviewed by counsel.
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11 22. All deposition testimony elicited in this matter regarding all
12 confidential documents marked as exhibits shall be attached to the confidential
13 portion of the transcript. Those parts of the transcript pertaining to confidential
14 matters shall be deemed “Confidential.”
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16 23. Should any “Confidential” information be disclosed to any
17 unauthorized person, through inadvertence of a party or through, the act of
18 omission of any person, the unauthorized person:
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20 (a) shall be informed promptly of the provisions of
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22 this Order by the party who first learns of the
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disclosure, and upon such notice shall be subject to the terms of this Order;

(b) shall be immediately identified to all other parties;

(c) shall be directed, if within the control of a party or otherwise asked, to sign a copy of this Order and agree to be bound by its terms. The person or entity whose inadvertence caused the unauthorized disclosure shall be responsible for securing the unauthorized person's assent to the Order and for all reasonable attorneys' fees, costs and expenses associated with enforcement of this Order. The inadvertent, unintentional, or in camera disclosure of Confidential information shall be not deemed a waiver, in whole or in part, of the designating party's claim of confidentiality. If a claim of inadvertent

1 production is made pursuant to this paragraph,
2 the unauthorized person receiving the
3 Confidential Information shall promptly return
4 the Confidential Information to the producing
5 party and make no use of the Confidential
6 Information for any purpose.
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9 24. The intentional disclosure of information or documents to any
10 person not qualified to receive such information or documents pursuant to the
11 terms and conditions of this Protective Order, or without following the terms
12 and conditions of this Protective Order, shall subject the party or person making
13 such disclosure to a finding of contempt and the imposition of sanctions, costs,
14 and other penalty, including the payment of attorney's fees, as ordered by the
15 court. Any party or person making such a disclosure shall also be liable for any
16 damages and attorneys' fees incurred by the aggrieved party as a result of the
17 disclosure of the "Confidential" information of documentation.
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21 25. All provisions of this Protective Order shall continue to be binding
22 after the conclusion of this action.
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1 26. This Protective Order shall not constitute a waiver of any party's
2 right to seek an order compelling discovery or the right at any proceeding to
3 present evidence, whether or not it is confidential.
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5 27. This Protective Order may be executed in counterparts and by
6 facsimile signature and shall be effective as to all "Confidential" information
7 produced since commencement of this litigation.
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9 28. This Protective Order shall also be effective as to all information
10 produced by Hunterwood in its February 14, 2013, document production.
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12 29. Nothing herein shall be deemed to restrict in any manner the use by
13 the parties of their own documents or materials.
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15 The undersigned hereby enter this Confidentiality Agreement and
16 Protective Order and consent to the form and entry of the within Protective
17 Order.
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2 DATED: May 2, 2013

THORNER, KENNEDY & GANO P.S.

3
4 By:

s/Jeremy D. Wallace
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David A. Thorner, WSBA #4783
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dat@tkglawfirm.com
jdw@tkglawfirm.com

12
13 DATED: May 2, 2013

GORDON & REES LLP

14
15 By:

s/Ryan G. Foltz
Ryan G. Foltz, WSBA #30696
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ORDER ON STIPULATION

Pursuant to the stipulation of the parties herein, and good cause appearing
therefore,

IT IS SO ORDERED.

s/Lonny R. Suko

DATED: May 10, 2013 _____

Honorable Lonny R. Suko
UNITED STATES DISTRICT
JUDGE

STIPULATED CONFIDENTIALITY AGREEMENT
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EXHIBIT "A"

CONFIDENTIALITY AGREEMENT DECLARATION

The undersigned declares and states as follows:

1. I have been asked to review certain materials or information that have been designed as CONFIDENTIAL MATERIALS within the terms of a "Confidentiality Agreement, Stipulation, and Protective Order" in the matter of Miguel Avila-Garcia v. Hunterwood Technologies Ltd., United States District Court for the Eastern District of Washington, Case No. CV-12-3103-LRS.
2. As a prior condition to my being permitted to receive, see or review any CONFIDENTIAL MATERIALS, I have read the aforementioned Confidentiality Agreement, and I agree to be bound by its terms.
3. I understand that the Confidentiality Agreement is legally binding upon me. I hereby agree to submit to the jurisdiction of the United States District Court, Eastern District of Washington, for enforcement of any claimed violation of any of the terms of the Confidentiality Agreement.
4. If I am an expert consultant, I shall produce a signed copy of this Exhibit "A" at my deposition.

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1 I declare under penalty of perjury under the laws of the State of
2 Washington the foregoing is true and correct.

3 Executed this _____ day of _____, 2013, at
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5 _____, _____.

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8 _____
9 Print Name Here

_____ Sign Here

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